



INTERIOR BOARD OF INDIAN APPEALS

Jacqueline Parsons v. Deputy Assistant Secretary - Indian Affairs (Operations)

14 IBIA 79 (03/14/1986)

Reconsideration denied:

14 IBIA 86



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

JACQUELINE PARSONS

v.

DEPUTY ASSISTANT SECRETARY--INDIAN AFFAIRS (OPERATIONS)

IBIA 85-37-A

Decided March 14, 1986

Appeal from a decision of the Deputy Assistant Secretary--Indian Affairs (Operations) concerning appellant's suspension from her position as Chief Judge of the Blackfeet Indian Tribe.

Affirmed.

1. Bureau of Indian Affairs: Administrative Appeals: Generally

Except as otherwise specified, the use of Secretarial authority delegated to Bureau of Indian Affairs' agency superintendents is subject to the administrative review procedure set forth in 25 CFR Part 2 and 43 CFR Part 4, Subpart D.

2. Bureau of Indian Affairs: Administrative Appeals: Filing:
Mandatory Time Limit

Regulations promulgated by the Bureau of Indian Affairs in 25 CFR 2.10 establish a 30-day period for filing notices of appeal.

APPEARANCES: Vance Gillette, Esq., Browning, Montana, for appellant; David C. Etheridge, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for appellee.
Counsel to the Board: Kathryn A. Lynn.

OPINION BY ADMINISTRATIVE JUDGE MUSKRAT

On June 19, 1985, the Board of Indian Appeals (Board) received a notice of appeal from Jacqueline Parsons (appellant). Appellant sought review of a decision issued by the Deputy Assistant Secretary--Indian Affairs (Operations) (appellee) concerning her suspension from the position of Chief Judge of the Blackfeet Indian Tribe (tribe). For the reasons discussed below, the Board affirms the decision.

Background

Appellant was the Chief Judge of the Blackfeet tribal court. On October 17, 1984, the Blackfeet Tribal Business Council passed Tribal Resolution No. 13-85, suspending appellant from that position for 6 months. In accordance with Chapter 1, section 2.3 of the Blackfeet Tribal Code, the resolution was submitted to BIA for approval.

On November 16, 1984, the Superintendent, Blackfeet Agency, Bureau of Indian Affairs (BIA, Superintendent), approved the resolution. Appellant filed an appeal from this decision with the Billings Area Director, BIA (Area Director), on December 14, 1984. By letter dated February 12, 1985, the Area Director affirmed the Superintendent's decision. ^{1/} There is no dispute that appellant's counsel received the Area Director's decision on February 15, 1985.

Appellant filed an appeal, dated March 21, 1985, from the Area Director's decision with the appellee. The notice of appeal, filed according to regulations with the deciding official, was received in the Area Director's office on March 22, 1985. By letter dated April 2, 1985, the Area Director advised appellant that her notice of appeal was not timely filed under 25 CFR 2.10(a) and, consequently, the case would be closed.

After appellee confirmed that appellant had been informed that her appeal was untimely, he took no further action on the appeal. By letter dated May 6, 1985, appellant forwarded a supplemental brief and supplemental exhibits directly to appellee. In response, appellee sent appellant a letter dated June 10, 1985, which stated in its entirety:

This is in reference to the material you have sent directly to this office concerning the matter of Chief Judge Parsons' suspension from the Blackfeet Tribal Court.

On April 2, 198[5], the Billings Area Director properly advised you that your notice of appeal was untimely filed pursuant to 25 CFR 2.10(b), and that the case is considered closed. We affirm the Area Director's conclusion. As you state you now have the option to proceed directly to federal district court.

Accordingly, we are enclosing the material you have submitted concerning this case.

On June 13, 1985, before receiving appellee's letter, appellant filed a motion for the Board to assume jurisdiction over her appeal under 25 C.F.R.

^{1/} The Area Director's letter concluded at page 2: "The decision will become final 60 days from receipt thereof, unless a notice of appeal is filed with the Deputy Assistant Secretary-- Indian Affairs (Operations), pursuant to regulations under 25 CFR 2.10, 2.11, and 2.13.

2.19, 2/ stating that appellee had not issued a decision in her appeal within 30 days from the date it was ripe. The Board received the motion on June 17, 1985. On June 19, 1985, the Board received a second letter from appellant in which she enclosed appellee's June 10, 1985 decision. Appellant indicated she disagreed with the decision and wished to continue the appeal.

By order dated June 21, 1985, the Board treated appellant's motion and letter as a timely appeal from appellee's June 10, 1985 decision, and requested the administrative record. Both parties filed briefs on appeal.

Discussion and Conclusions

The preliminary issue raised in this appeal is the narrow procedural question of whether or not appellant's notice of appeal to appellee filed with the Area Director was timely filed. Under 25 CFR 2.10(a):

A notice of appeal shall be in writing and filed in the office of the official who made the decision that the appellant wishes to appeal. * * * The notice of appeal must be received in the office of the official who made the decision within 30 days after the date notice of the decision complained of is received by the appellant, together with all supporting documents.

Section 2.10(b) provides that "[n]o extension of time will be granted for filing of the notice of appeal. Notices of appeal which are not timely will not be considered, and the case will be closed."

Appellant does not dispute that she received notice of the Area Director's decision on February 15, 1985, or that the Area Director properly computed the time for the filing of her notice of appeal. Instead, she argues that her appeal from the Superintendent's decision was timely and is controlling because the Superintendent has been delegated the Secretarial authority to approve tribal resolutions. Thus, she contends that the appeal from the Superintendent's decision should have gone directly to the Board, without the intermediate step of review by appellee and, apparently, the Area Director.

[1] Novelty notwithstanding, appellant's argument ignores the administrative review system established in 25 CFR Part 2 and 43 CFR Part 4, Subpart D. Agency superintendents have been delegated the authority to make initial decisions in many areas under the jurisdiction of BIA. Their use of that authority, however, except as otherwise specified, remains subject to the administrative review procedures set forth in Departmental regulations.

2/ Section 2.19 states in pertinent part:

"(a) Within 30 days after all time for pleadings (including extension granted) has expired, the Commissioner of Indian Affairs [now, Deputy Assistant Secretary--Indian Affairs (Operations)] shall:

"(1) Render a written decision on the appeal, or

"(2) Refer the appeal to the Board of Indian Appeals for decision.

"(b) If no action is taken by the [Deputy Assistant Secretary] within the 30-day time limit, the Board of Indian Appeals shall review and render the final decision."

[2] Appellant's notice of appeal to the Deputy Assistant Secretary was not filed within 30 days of her receipt of the Area Director's decision. This filing deadline is set forth in 25 CFR 2.10. Appellant was on notice that her appeal was governed by, inter alia, section 2.10. ^{3/} Accordingly, her appeal was properly dismissed as untimely. ^{4/} Hamlin v. Portland Area Director, 9 IBIA 16 (1981); Benson-Montin-Greer Drilling Corp. v. Acting Albuquerque Area Director, 7 IBIA 67 (1978). Cf. Navajo Resources, Inc. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 10 IBIA 72, 73 n.1 (1982) (finding that there was no proof of date of receipt of the decision being appealed).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Deputy Assistant Secretary's June 10, 1985 decision is affirmed. ^{5/}

//original signed

Jerry Muskrat
Administrative Judge

I concur:

//original signed

Wm. Philip Horton
Acting Chief Administrative Judge

^{3/} See note 1, supra.

^{4/} Because it was rendered moot by appellee's June 10, 1985 decision, the Board does not address the question of whether initial notification of untimeliness of an appeal to the Deputy Assistant Secretary of an Area Director's decision was properly within the province of the Area Director.

^{5/} Because of this disposition, appellant's substantive arguments and procedural motions are not reached.